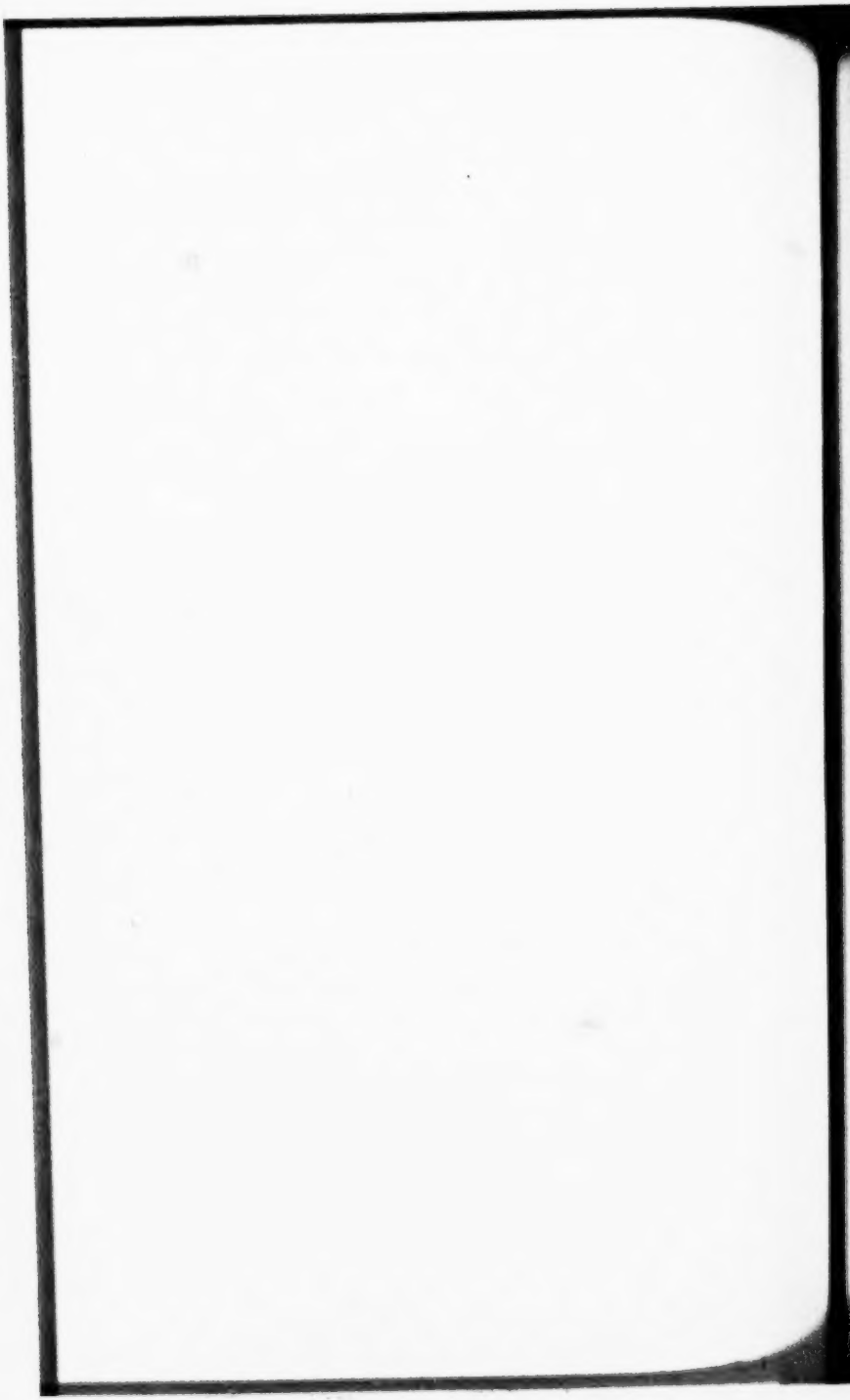

JAN 28 1963

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1962

No. 668

THADDEUS B. TAYLOR,
Petitioner,

vs.

STATE OF MICHIGAN, et al.,
Respondents.

REPLY OF PETITIONER TO DEFENDANTS' OBJECTIONS TO ISSUING OF A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

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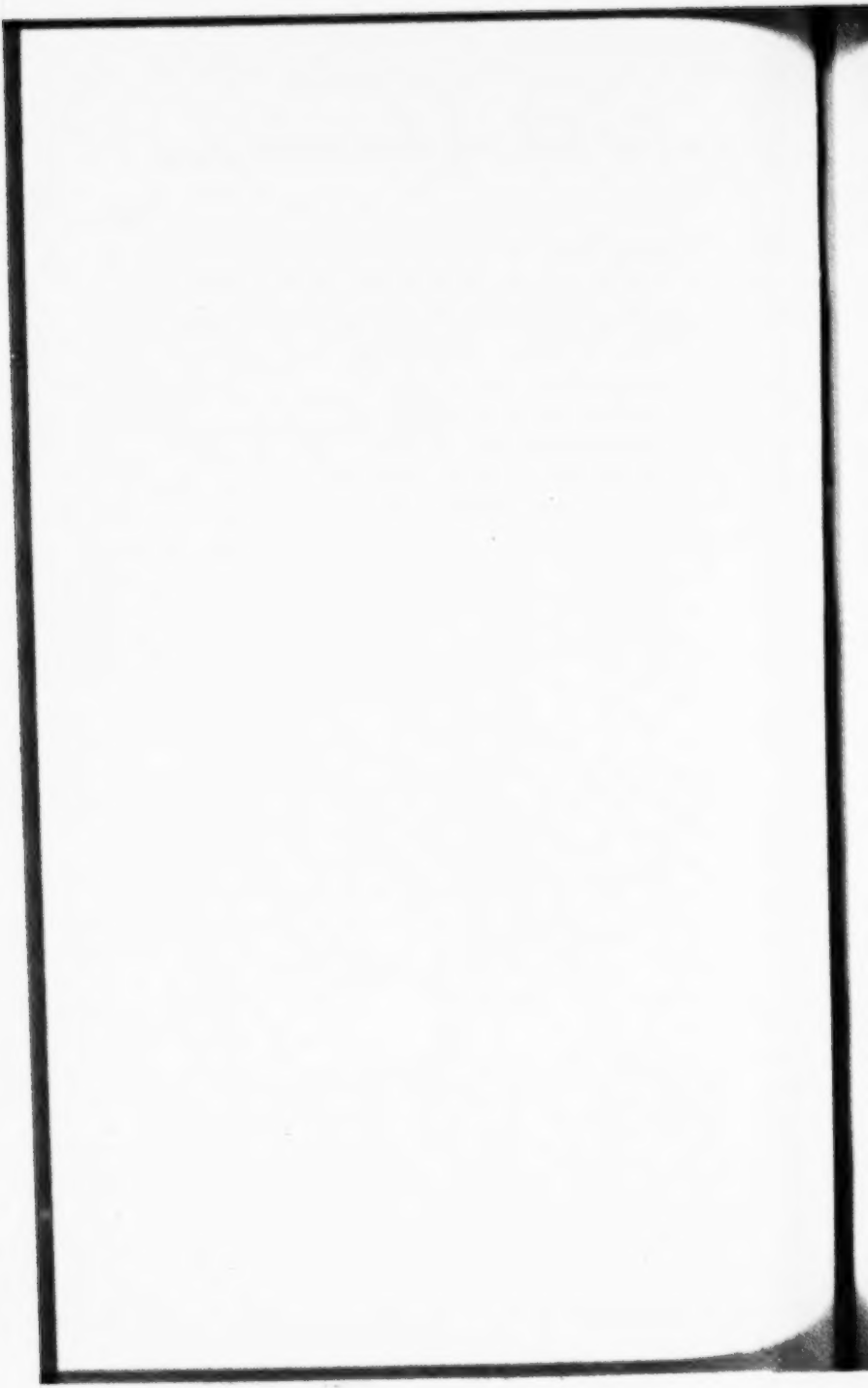

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PRESENTATION

The defendants in the response filed in opposition to he plaintiff's petition have completely and totally failed o discuss a single one of the questions involved, as stated n page 4 of plaintiff's petition. Instead, counsel would etract the attention of the court from the basic constitutional questions therein stated, by proposing a single ountering question which until the filing of the response erein had never before been proposed in this case.

The defendants know that this plaintiff had not herein nd did not in the Michigan Supreme Court, claim invidious discrimination in the *articles of the Michigan Constitution*. The invidious discrimination in this case has been *he refusal of the administrative officers* of the State to ay to the plaintiff the same annual state paid salary s was paid to Circuit Judges; and the judgment of the

Michigan Supreme Court which has *excluded the plaintiff from the benefits granted to a class* of which he was a member and part, all of which has been in opposition to legislative command and authority.

Whether or not such a reasonable basis or state of facts existed as to warrant the classification of Circuit Judges in Article 16 Section 3 of the *Michigan Constitution* is not a question or issue presented in plaintiff's petition to this court; nor was it before the Michigan Supreme Court. Defendants are not called upon to defend or to present reasons for the immunity granted to Circuit Judges in said article. The considerations which may have prompted the immunity, which defendants have stated in three parts on page 23 of their response and objections form no basis for a denial of plaintiff's petition. If it were so, this plaintiff would point out where each of said reasons might equally apply to the judge of the superior court.

The objections of the defendants are not to the questions involved nor to the reasons why the writ should issue, and therefore are without merit.

1. Plaintiff in his petition to this court has made no claim, that the immunity "except circuit judges" in Sec. 3, Art. 16 of the *Michigan Consitution* violates the equal protection provisions of Sec. 1, Art. XIV of the *Constitution of the United States.*

2. Plaintiff has not claimed invidious discrimination in the provisions of the *Michigan Constitution.*

3. Neither the judicial article of *Michigan's 1850 Constitution* (Article 6, Sec. 1) nor the judicial article of *Michigan's 1908 Constitution* (Article 7, Sec. 1) prohibit the Michigan legislature from creating courts of the *same judicial class* as the circuit courts. On the contrary such courts may be created, which shall be inferior only to the Supreme court.

4. In this case we are dealing with the mandatorily required payment of an annual salary by the State of Michigan to the Circuit Judges and the Judge of Superior Court, as distinguished from the *supplemental* and voluntarily contributed salary which the county or counties,

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comprising a judicial circuit, may pay to a circuit judge (or which the city commission of Grand Rapids may voluntarily give to the judge of the Superior Court), *in addition* to the state paid salary.

5. The immunity "except circuit judges" in Sec. 3, Art. 16 of the *Michigan Constitution* was the direct result of the provisions of Sec. 12 of Art. 7 thereof, which is as follows:

Article 7, Sec. 12:

> "Each of the judges of the circuit courts shall receive a salary payable monthly. In addition to the salary paid from the state treasury, each circuit judge may receive from any county in which he regularly holds court such additional salary as may be determined from time to time by the boards of supervisors of any county. In any county where such additional salary is granted it shall be paid at the same rate to all circuit judges regularly holding court therein."

6. Only the Michigan legislature has the power to fix the amount of the annual state paid salary to the judge of superior court and the circuit judges. *That body has declared that their salaries shall be equal.* The "same annual salary" means an equal salary during each and every year of an official term.

There was not a spoken word in the debates of the constitutional convention of 1907 relating to the inclusion of the immunity in Sec. 3, Art. 16, which mentioned or referred to the state paid salary of circuit judges. Every word had reference to the *supplemental salary* which might be granted by a county. It was Sec. 12 of Art. 7, supra, which put "except circuit judges" in Sec. 3 of Art. 16, of the *Michigan 1908 Constitution.*

Complete and full proof of the foregoing statement has been furnished to this court by Appendix "A" of defendants' response "Extracts from the debates of Michigan's Constitutional Convention 1907-1908."

The defendants in the objections filed, do not claim that the plaintiff was not a member and part of the *same*

judicial class as a circuit judge in the administration of law in the State of Michigan; nor do they deny that within their respective jurisdictions circuit courts and the superior court operate and function upon an *equal* basis, with *equal* powers and *concurrent* jurisdiction. They do not challenge the decisions of the Michigan Supreme Court which have declared the Circuit Courts and the Superior Court to be of the *same class.* They say as did the Michigan Supreme Court "You are not a Circuit Judge." That is not the factor which governs decision in this case. It takes more than a difference in names to separate a class. White men are not colored, and colored men are not white. To the present time this court has not made a difference in color of skin, names or the kind of clothes a man wears the basis of denying equal protection of the law, men or judges performing identical work under legislative authority and subject to identical supervision with concurrent jurisdiction, whose judgments and decrees are of equal force and authority are of equal class, requiring each to be treated alike.

There is no provision in the *Michigan Constitution* which forbids payment by the State of Michigan to the judge of the Superior Court of the same annual salary as is paid to a circuit judge. It is not a fact that the salary as "fixed" by legislative act for the Judge of Superior Court was increased during his term of office. The amount ordered to be paid has remained as "fixed" by Sec. 6 of Act 49, *P. A.* 1875, *C. L.* 1948, 727.6; *M. S. A.* 27.3616 viz.: "The same annual salary as may be payable to circuit judges" which said salary (circuit judges) by express constitutional permission may be increased at any time.

Not a dollar of salary can be paid to the Judge of Superior Court by authority of the act fixing the salary of Circuit Judges. Such act does not operate upon the Superior Court. Only by the effect and operative force of Sec. 6 of Act 49, *P. A.* 1875, *C. L.* 1948 727.6; *M. S. A.* 27.3616 is authority conferred upon the state treasurer. He determines the amount in dollars by examining the act which fixes the salary of the circuit judges. Justice Black's opinion is most enlightening on this distinction (pp. 17a-30a of Petitioner's Petition).

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Can there be any question that the legislature in creating and establishing the Superior Court intended that court should be a part and member of the same judicial class in the administration of law within the State of Michigan as the Circuit Courts and Circuit Judges? Do not the provisions of the law, set forth in Petitioner's Appendix D, E, F, G, H, I and J completely disclose such intent?

When and if this court determines as did the trial court (R. 71a, R. 77a), that your petitioner was a member of the same judicial class as a circuit judge in the State of Michigan, the final answer to the questions involved will be given and all other issues however raised will be of no concern.

The defendants on page 25 of their response make reference to the late case of *Kavanaugh et al vs. Brown, Treasurer of Michigan, et al.*, 371 U. S. 35, 9 L. ed. 2nd 112. The members of this court know full well that the facts and questions involved in that case are not comparable to the case of this plaintiff and could never be a basis for a denial of plaintiff's petition.

CONCLUSION

The questions involved which form the basis upon which petitioner has requested this court to issue its writ of certiorari are as stated in the petition. There is no claim of *constitutional* discrimination or that the immunity granted to Circuit Judges violates the Federal constitution. Such a claim would avail nothing for this plaintiff. Petitioner claims he has been discriminated against as a member of a judicial class. These questions, presented by petitioner are *federal questions*, and this court may properly assume jurisdiction for petitioner's protection. To this court plaintiff has hereby made his last appeal to obtain justice. From the judgment of this court once pronounced there is no appeal. For the plaintiff it is "The Alamo." In the letters of Abraham Lincoln we find these words, "I am bound not always to win, but I am always bound to stand by that which is right." And that is the reason thereof this plaintiff has requested this court in the exercise of its judicial discretion to review the judgment

of the Michigan Supreme Court in this case. In no other manner may the irreparable wrong be corrected.

Respectfully submitted,

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